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U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

JUL 31 1996

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY AND
CRYSTAL EXPLORATION AND
PRODUCTION COMPANY,
Plaintiffs,

vs.

ATLANTIC RICHFIELD COMPANY,
Defendant.

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CASE NO. CV95-2115S

JUDGE STAGG

MAGISTRATE JUDGE PAYNE

DEFENDANT'S MOTION FOR STAY PENDING APPEAL OF
ORDER OF SEVERANCE AND REFERRAL TO BANKRUPTCY
COURT AND REQUEST FOR EXPEDITED CONSIDERATION

NOW INTO COURT, through undersigned counsel, comes defendant, ATLANTIC RICHFIELD COMPANY ("ARCO"), who respectfully requests that this Court enter a stay pending ARCO's appeal of the "Order of Severance and Referral to Bankruptcy Court," entered by the United States Magistrate Judge on July 19, 1996. The grounds for the stay pending appeal and for expedited consideration of this Motion are set forth in detail in the Memorandum in support of this Motion which is filed contemporaneously herewith.

WHEREFORE, DEFENDANT, ATLANTIC RICHFIELD COMPANY, PRAYS that the Court expedite its consideration of this Motion and issue an Order imposing a stay pending ARCO's appeal of the Order of Severance and Referral to Bankruptcy Court.

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DEFENDANT FURTHER PRAYS for all orders and decrees necessary in the premises and for full, general and equitable relief.

Shreveport, Louisiana, this 31st day of July, 1996.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY AND
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CASE NO. CV95-2115S

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Defendant's Motion for Stay Pending Appeal of Order of Severance and Referral to Bankruptcy Court and Request for Expedited Consideration and Memorandum in support thereof have been served upon plaintiffs' counsel of record, Osborne J. Dykes, III, Fulbright & Jaworski, 1301 McKinney, Suite 5100, Houston, Texas 77010-3095, and Albert M. Hand, Jr., Cook, Yancey, King & Galloway, P.O. Box 22260, Shreveport, Louisiana 71120-2260, by depositing a copy of same in the U.S. Mail, properly addressed, with adequate postage affixed thereto.

Shreveport, Louisiana, this 31st day of July, 1996.



OF COUNSEL

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

JUL 31 1996

CLERK
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CRYSTAL OIL COMPANY AND
CRYSTAL EXPLORATION AND
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Defendant.

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CASE NO. CV95-2115S

JUDGE STAGG

MAGISTRATE JUDGE PAYNE

**MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION FOR STAY PENDING APPEAL OF ORDER OF
SEVERANCE AND REFERRAL TO BANKRUPTCY COURT
AND REQUEST FOR EXPEDITED CONSIDERATION**

MAY IT PLEASE THE COURT:

Defendant, ATLANTIC RICHFIELD COMPANY ("ARCO"), respectfully submits this Memorandum in support of its Motion for Stay Pending Appeal of Order of Severance and Referral to Bankruptcy Court and Request for Expedited Consideration.

On July 19, 1996, this Court entered the following: (a) Memorandum Ruling; (b) Order of Severance and Referral to Bankruptcy Court (the "Referral Order"); and (c) Order of Transfer (the "Transfer Order"). As set forth in more detail in the Memorandum Ruling, Referral Order and Transfer Order, the Court severed the bankruptcy discharge claim of plaintiff, Crystal Oil Company ("Crystal"), and referred such claim to the United States Bankruptcy Court for the Western District of Louisiana (the

"Bankruptcy Court") for adjudication. With respect to all other claims asserted in this action, the Court directed the transfer of such claims to the United States District Court for the District of Colorado. The Referral Order has not been stayed and, accordingly, is immediately effective.

On July 29, 1996, ARCO filed its Statement of Appeal appealing the Memorandum Ruling and the Referral Order pursuant to Fed. R. Civ. P. Rule 72 and Local Rule 19.09. Among other things, ARCO argues that the Memorandum Ruling and Referral Order are in error since the discharge claim requires substantial and material consideration of the environmental laws of the United States and withdrawal of the reference is mandated under 28 U.S.C. § 157(d). In the event that ARCO's arguments are accepted by the United States District Court, then the discharge claim should not be referred to the Bankruptcy Court and such claim may ultimately be transferred to the United States District Court for the District of Colorado.

A stay of the Referral Order, which ARCO is appealing, is required in the interests of justice and fairness. The Court stayed the Transfer Order for 15 days and determined that "[i]f an appeal is taken to the District Judge, the [transfer] order shall remain stayed until the appeal is decided." Thus, the appellate rights of Crystal and Crystal Exploration and Production Company ("Crystal Exploration") have been protected, and, in view of the fact that plaintiffs have appealed the Court's Transfer Order, the

stay will remain in place until Judge Stagg issues his decision on the appeal. The unfairness of these circumstances to ARCO is illustrated by developments that have occurred since the issuance of the Magistrate Judge's Orders. ARCO is now required to defend Crystal's bankruptcy discharge claim in the Bankruptcy Court and the merits of plaintiffs' contract claim in this Court, not in the United States District Court of the District of Colorado. The Bankruptcy Court has already set a Status Conference on the bankruptcy discharge claim for August 22, 1996. On July 30, Crystal filed a Motion for Summary Judgment in the Bankruptcy Court on its bankruptcy discharge claim and Crystal Exploration filed a Motion for Summary Judgment in this Court on the contract claim, well in advance of the October 31 deadline that has been set for the filing of summary judgment motions, and prior to the filing of plaintiffs' responses to ARCO's discovery requests. Since the Transfer Order will be stayed until Crystal's appeal has been decided, ARCO must complete discovery on both issues and defend the merits of both issues in two different courts, neither of which is the United States District Court of the District of Colorado. This result was certainly not contemplated by the Court's July 19, 1996 Memorandum Ruling and Orders. In the interests of fairness, ARCO should receive the same protection of its appellate rights through the imposition of a stay. Both the Referral Order and the Transfer Order should be stayed pending appeal.

Although the Referral Order is not a final judgment, the general standards for staying a civil judgment should be considered with respect to the Referral Order. See Fed. R. Civ. P. Rule 62 (stay of proceedings to enforce a judgment); Hilton v. Braunskill, 107 S.Ct. 2113, 2118 (1987) (applying general civil stay standard to habeas relief). These factors include: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."

ARCO's appellate arguments against referral to the Bankruptcy Court have substantial merit. ARCO hereby incorporates by reference Defendant's Memorandum in Opposition to Plaintiff's Motion to Refer Bankruptcy Discharge Issue to the Bankruptcy Court (the "Memorandum") wherein ARCO set forth its arguments against referral. As recited in more detail in the Memorandum, since the discharge claim involves substantial issues of United States environmental law, the claim should ultimately be adjudicated by a United States District Court. See 28 U.S.C. § 157(d). Neither the Memorandum Ruling nor the Referral Order analyze this important argument.

ARCO will be irreparably injured if a stay is not entered. Unless a stay is issued, the Bankruptcy Court will proceed with adjudication of the discharge claim regardless of

ARCO's pending appeal and Crystal Exploration may proceed to the merits of its contract claim in this Court notwithstanding the issuance of the Transfer Order. Without a stay of the Referral Order, ARCO's appeal may become moot and ARCO will have been effectively denied its appellate rights. Further, ARCO will suffer injury by reason of having to defend itself in the wrong Court while pursuing its appeal. Ultimately, if ARCO is successful, the United States District Court may not be able to untie this unique procedural knot.

The entry of a stay pending appeal of the Referral Order will preserve the status quo. No party will be prejudiced by the entry of a stay pending resolution of ARCO's appeal. An appeal from a decision of a United States Magistrate Judge to a United States District Judge is a streamlined and expeditious process which will not cause undue delay. The relief requested by ARCO is simply the logical analogue of the stay already issued with respect to the Transfer Order.

Judicial economy and public interest also counsel in favor of the issuance of a stay pending appeal of the Referral Order. If a stay is not imposed but ARCO is successful on appeal, the Bankruptcy Court would have spent its resources on a fruitless exercise. The public interest is in having the right court adjudicate the issues.

Because the Bankruptcy Court is proceeding immediately with the matter referred to it and because plaintiffs have already


filed a motion for summary judgment on that issue, ARCO requests that the Court expedite its consideration of this Motion.

Shreveport, Louisiana, this 31st day of July, 1996.

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